

T.D. INFORMAL MEMO: DO NOT MAIL THIS MEMO TO APPLICANT

Date:	03-Aug-07	APPL. S. N.:	10608492
To Examiner:	CHOU, ALBERT	Art Unit	2616
From	Logan, Rugenia PARALEGAL SPECIALIST	Return This Memo To: Case Drop-Off Location	JEF-2D68

SUBJECT: Decision on Terminal Disclaimer(T.D.) filed:

INSTRUCTIONS: I have reviewed the submitted T.D. with the results as set forth below. If you agree, please use the appropriate form paragraphs identified by this informal memo in your next Office action to notify applicant of the T.D. If you disagree or have any questions, please see me or the Special Program Examiner. THIS IS AN INFORMAL, INTERNAL MEMO ONLY. IT MUST NOT BE (1) MAILED TO APPLICANT OR (2) PLACED OF RECORD IN THE APPLICATION FILE. When your action is complete, please initial, date and return this memo to me. THANK YOU.

The T.D. is PROPER and has been recorded (see 14.23).

The T.D. is NOT PROPER and has not been accepted for the reason(s) checked below (see 14.24):

- The TD fee of [REDACTED] has not been submitted nor is there any authorization in the application file for the use of a deposit account
- The T.D. does not satisfy Rule 321 in that the person who has signed the T.D. has not stated the extent of his/her interest (and/or the extent of the interest of the business entity represented by the signature) in the application/patent (see 14.26 & 14.26.01).
- The T.D. lacks the enforceable only during common ownership clause – needed to overcome a non-statutory double patenting rejection, Rule 321(b) (see 14.27.01).
- The T.D. is directed to a particular claim(s), which is not acceptable since "the disclaimer must be for a terminal portion of the term of the entire patent to be granted" (MPEP 1490) (see 14.26 & 14.26.02).
- The person who signed the T.D.:
 - is not an attorney "of record" (see 14.29 and 14.29.01).
 - has failed to state his/her capacity to sign for the business entity (see 14.28).
 - is not recognized as an officer of the assignee (see 14.29 & possible 14.29.02).
- No documentary evidence of a chain of title from the original inventor(s) to assignee has been submitted, nor is the reel and frame number specified as to where such evidence is recorded in the Office (see 37 CFR 3.73(b) and 1140 O.G. 72). NOTE: This documentary evidence or the specifying of the reel and frame number may be found in the T.D. or in a separate paper of record in the application (see 14.30).
- The T.D. is not signed (see 14.26 & 14.26.03).
- The serial number of the application (or the number of the patent) which forms the basis for the double patenting rejection is missing or incorrect (see 14.32).
- The serial number of this application (or the number of the patent in reexam or reissue cases being disclaimed is missing or incorrect (see 14.26, 14.27.02 or 14.26.05).
- The period disclaimed is incorrect or not specified (see 14.26, 14.27.02 or 14.26.03).
- Other: [REDACTED]
- Suggestion to request refund (see 14.36). NOTE: If already authorized, credit refund to deposit account and do not check this item.

I have appropriately notified applicant(s) of the status of the Terminal Disclaimer filed in this case.

Ex. Initials: _____ Date: _____

Log Date:

Application Number 	Application/Control No. 10/608,492	Applicant(s)/Patent under Reexamination CONKLIN ET AL.
Document Code - DISQ		Internal Document – DO NOT MAIL

TERMINAL DISCLAIMER	<input checked="" type="checkbox"/> APPROVED	<input type="checkbox"/> DISAPPROVED
Date Filed : August 1, 2007	This patent is subject to a Terminal Disclaimer	

Approved/Disapproved by:

Henry D. Jefferson

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENT**Docket Number (Optional)
10.0413

In re Application of: Richard CONKLIN et al.

Application No.: 10/608,492

Filed: June 30, 2003

For: SWITCHING CONTROL MECHANISM FOR SUPPORTING RECONFIGURATION WITHOUT INVOKING A REARRANGEMENT ALGORITHM

The owner*, CIENA Corp., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 7,108,729 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney or agent of record. Reg. No. 48,234

/s/ Christopher L. Bernard
Signature

August 1, 2007
Date

Christopher L. Bernard
Typed or printed name

704-790-3600
Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/56 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the burden estimate or any suggestions for reducing this burden, should be sent to the Chief Counsel for Interoperability, Office of the U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.